

STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

SENATE BILL 1075

By: Muegge

AS INTRODUCED

An Act relating to agriculture; creating the Agriculture Production Fair Practices Act; providing legislative intent; defining terms; making certain action unlawful; defining and explaining bargaining; requiring certain actions; requiring certain offers; requiring submission of certain petitions; providing for contents; requiring notice; providing for accreditation of certain associations; requiring certain findings; authorizing amended requests; prohibiting certain amended requests; authorizing certain hearings; providing for appeals; providing consequences for violations; requiring opportunities to correct deficiencies; providing for notice and hearings on complaint; providing for mediation services; providing for arbitration; providing for certain facts that constitute prima facie evidence; stating violation; requiring certain investigations; providing for promulgation of rules; providing for cooperation; authorizing certain civil actions; providing for penalties; providing for certain enforcement; prohibiting certain actions; providing for damages; providing for jurisdiction; granting certain authority to the Department of Agriculture and the State Board of Agriculture; requiring confidentiality; providing for certain public records; providing for subpoenas; requiring certain attendance and testimony or evidence; providing for revocation of subpoena; providing for punishment; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-10-101 of Title 2, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Agriculture Production Fair Practices Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-10-102 of Title 2, unless there is created a duplication in numbering, reads as follows:

The Legislature finds that the contract production of agriculture commodities, including, but not limited, to poultry and swine constitutes an important and growing portion of the state's economy; that it is beneficial to the citizens of this state to protect the vitality of these industries; that there are many contract agriculture producers in the State of Oklahoma who need assistance and protection in order to maintain their businesses; and that contract growers should be protected from hardships caused by unfair, deceptive, and unethical bargaining and trade practices of integrators.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-10-103 of Title 2, unless there is created a duplication in numbering, reads as follows:

As used in the Agriculture Production Fair Practices Act:

1. "Person" includes individuals, partnerships, corporations, and associations;
2. "Board" means State Board of Agriculture;
3. "Department" means the State Department of Agriculture;
4. "Poultry" means chickens, turkeys, ducks, geese, or the eggs therefrom;
5. "Commissioner" means the Commissioner of Agriculture;
6. "Livestock" means cattle, sheep, swine, or goats;
7. "Contract grower" means any person engaged in the business of caring for or raising poultry, livestock, or other agricultural products under a contract growing arrangement, whether the poultry, swine, or other agricultural product is owned by such person or by another;
8. "Contract growing arrangement" means any growout contract, marketing agreement, or other arrangement under which a contract grower cares for or raises poultry, livestock, or other agricultural products, in accord with another's instructions;

9. "Integrator" means any person, other than an association, engaged in the business of obtaining poultry, livestock, or other agricultural products or services related thereto through the provisions of a contract growing arrangement;

10. "Association" means any association of agricultural producers as defined in Section 15(a) of the Agricultural Marketing Act of 1929, as amended (49 Stat. 317; 12 U.S.C. 1141(a)), or in Section 1 of the act entitled, "an Act to authorize association of agricultural producers", approved February 18, 1922 (42 Stat. 388; 7 U.S.C. 291); and

11. "Accredited association" means an association of producers accredited in accordance with Section 7 of this act.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-10-104 of Title 2, unless there is created a duplication in numbering, reads as follows:

It shall be unlawful for any integrator to engage in or permit an employee or agent to:

1. Engage in or use any unfair, unjustly discriminatory, or deceptive practice or device;

2. Make or give any undue or unreasonable preference or advantage to any particular person or locality in any respect whatsoever, or subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever;

3. Coerce a contract grower in the exercise of the right of such grower to contract with, join, or maintain membership in, or to refrain from contracting with, joining, or maintaining membership in an association or to refuse to deal with a contract grower because of the exercise of the right of the grower to contract with, join or maintain membership in an association;

4. Discriminate against a contract grower with respect to price, quantity, quality, or other terms of purchase, acquisition,

or other handling of agricultural products because of membership in or the contract of the grower with an association;

5. Coerce or intimidate a contract grower to breach, cancel, or terminate a membership agreement or marketing contract with an association or a contract with an integrator;

6. Offer to pay or loan money or anything of value, or to offer or give any other inducement or reward to a contract grower for refusing to join or to cease to maintain membership in an association;

7. Make or circulate false reports about the finances, management, or activities of an association, a contract grower or another integrator;

8. Refuse to bargain in good faith with an association accredited to represent contract growers, if the integrator is designated pursuant to Section 7 of this act; or

9. Conspire, combine, agree, or arrange with any other person to do, or aid or abet the doing of, any act made unlawful by the Agriculture Production Fair Practices Act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-10-105 of Title 2, unless there is created a duplication in numbering, reads as follows:

It shall be unlawful for any accredited association to engage in or to permit an employee or agent to:

1. Refuse to bargain in good faith with an integrator designated pursuant to Section 7 of this act;

2. Coerce or intimidate an integrator to breach, cancel, or terminate a marketing contract with an association or a contract with a member of an association or contract grower who is not a member of an association;

3. Make or circulate false reports about the finances, management, or activities of an association, integrator or contract grower;

4. Coerce or intimidate a contract grower to breach, cancel, or terminate a membership agreement or marketing contract with an association or an integrator; or

5. Conspire, combine, agree, or arrange with any other person to do or aid or abet the doing of any practice which is in violation of the Agriculture Production Fair Practices Act.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-10-106 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. "Bargaining" is the performance of the mutual obligation of an integrator and an accredited association to meet at reasonable times and for reasonable periods of time for the purpose of negotiating in good faith with respect to the price, terms of contract or sales, compensation for products or services produced or provided under contract, or other provisions relating to the products or services that are provided by the members of such accredited association or by the association as their agent. Such obligation on the part of any integrator shall extend only to accredited associations and the products and services with which such associations are accredited to bargain. Such obligation does not require either party to agree to a proposal or to make a concession.

B. If an integrator purchases a product or service from other contract growers under terms more favorable to such producers than the terms negotiated with an accredited association for such product or service, the integrator shall offer the same terms to the accredited associations. In comparing such terms, there shall be taken into consideration, in addition to the stipulated purchase price and without limiting the generality of the foregoing, any bonuses, premiums, hauling or loading allowances, reimbursement of expenses, or payment for special services of any character which may be paid by the integrator, and any sums paid or agreed to be paid by

the integrator for any other designated purpose than payment of the purchase price.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-10-107 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. An association seeking accreditation to bargain for contract growers of agricultural products or services shall submit to the Commissioner of Agriculture a petition for accreditation.

B. The petition shall:

1. Specify the agricultural products or services of the contract growers for which the association seeks accreditation to bargain;

2. Designate the integrators, individually or by production or marketing area or by some other appropriate classification, with whom the association shall be accredited to bargain; and

3. Contain such other information and documents as may be required by the Commissioner.

C. 1. Upon receiving the petition and any supporting material, the Commissioner shall serve a copy upon all designated integrators as follows:

a. integrators who have been designated individually shall receive service as provided for service of a petition pursuant to Section 2004 of Title 12 of the Oklahoma Statutes, and

b. integrators who have been designated by production or marketing area or by some other general classification shall receive service as provided by paragraph 3 of subsection C of Section 2004 of Title 12 of the Oklahoma Statutes.

2. The Commissioner shall accredit such association if, based upon the evidence submitted, the Commissioner finds:

- a. that under the charter documents or bylaws of the association, it is owned by contract growers and meets the requirement of the Capper-Volstead Act, 7 U.S.C. 291-2,
- b. that the association has submitted a copy of its bylaws which provide that: each member of the association shall have one vote in all votes of the membership of the association; that officers and directors shall be elected by a majority of the members voting or by delegates representing a majority of the membership; and that all elections shall be by secret ballot,
- c. that the association has contracts that are binding under Oklahoma law with its members empowering the association to sell or negotiate terms of sale of the products or services of its members,
- d. that the association represents a sufficient number of contract growers or that its members produce a sufficient quantity of agricultural products or services to enable it to function as an effective agent for contract growers in bargaining with the designated integrators. In making this finding, the Commissioner shall exclude any quantity of the agricultural products or services contracted by contract growers with contract grower owned and controlled processing cooperatives and any quantity of such products or services produced by integrators, and
- e. that the association has as one of its functions acting as principal or agent for its members in negotiations for prices and other terms of trade with respect to the production, sale, and marketing of their products or services.

D. 1. The Commissioner shall give notice to the petitioners, to all designated integrators and to any interested party which has requested notice within sixty (60) days of the filing date of the petition for accreditation by an association whether the association shall be accredited. If the Commissioner determines that insufficient evidence was filed by the association, the Commissioner may permit the association to file an amended request. The Commissioner shall then determine, within thirty (30) days of filing the amended petition, whether the association shall be accredited.

2. An association which is denied accreditation after filing of an amended request may not file another request for accreditation for a period of one (1) year.

3. Within thirty (30) days of a decision by the Commissioner denying accreditation to an association, the association may request a hearing before the Commissioner. The Commissioner shall then conduct a hearing to determine whether the association shall be accredited. This hearing and any appeal shall be governed by the provisions of the Administrative Procedures Act. Only an association denied certification after such hearing may appeal pursuant to the Administrative Procedures Act.

4. The Commission shall give notice of the hearing to the petitioners, integrators and to any interested parties who have requested notice not less than twenty (20) days prior to such hearing.

E. If the Commissioner believes that an accredited association has ceased to meet the standards for accreditation set forth in this section, the Commissioner shall notify the association of the respects in which the Commissioner believes it has ceased to maintain such standards and allow it a reasonable time to answer or to correct the deficiencies noted. Thereafter, if the Commissioner is not satisfied that the association is then in compliance with this section, the Commissioner shall notify the association and hold

a hearing to consider the revocation of accreditation. If, based upon the evidence submitted at the hearing, the Department finds that the association has ceased to maintain the standards for accreditation, the Commissioner shall revoke the accreditation of such association.

F. The Commissioner may amend the order of accreditation only with respect to the products or services specified therein. The Commissioner shall give notice of any proposed amendment and the reasons therefor to all accredited associations and integrators that would be directly affected thereby and shall provide an opportunity for a public hearing. Thereafter, the Commissioner may amend the order if the Commissioner finds such amendment will be conducive to more effective bargaining and orderly marketing by the accredited association of the products or services of its members.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-10-108 of Title 2, unless there is created a duplication in numbering, reads as follows:

The Commissioner of Agriculture shall provide mediation services if requested either by an accredited association or by a designated integrator engaged in bargaining with an accredited association, and if, in the Commissioner's judgment, an impasse in bargaining has occurred. The Commissioner may contract with the Oklahoma Agricultural Mediation Program for the provision of such services.

Such services may include the provision of assistance in proposing and implementing arbitration agreements between accredited associations and designated integrators.

If an integrator or an association fails or refuses to participate in mediation services made available after a request for such services has been made pursuant to this section, such failure or refusal shall be considered prima facie evidence that such integrator or association has refused to bargain in good faith in

violation of paragraph 8 of Section 4 or paragraph 1 of Section 5 of the Agricultural Production Fair Practices Act.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-10-109 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Whenever it is charged that an association, an integrator, a contract grower or any other person has violated or is violating any provision of the Agriculture Production Fair Practices Act, the Commissioner shall investigate such charges. If, upon such investigation, the Commissioner has reasonable cause to believe that the person charged has violated such provision, the Commissioner shall issue and cause to be served upon the person so charged a complaint stating the charges. The complaint shall summon the named person to a hearing before the Commissioner at the time and place therein fixed.

B. The person complained of shall have the right to file an answer to the original and any amended complaint and to appear in person or otherwise and give testimony. The person who filed the charge shall also have the right to appear in person or otherwise and give testimony.

C. If, upon a preponderance of the evidence, the Commissioner is of the opinion that the person complained of has violated any provision of the Agriculture Production Fair Practices Act, the Commissioner shall issue and cause to be served on such person an order requiring such person to cease and desist from such violation and shall order such further affirmative action, as may be provided for in the Agriculture Production Fair Practices Act, as will effectuate the policies of this title.

D. The State Board of Agriculture shall promulgate rules as may be necessary to carry out the provisions of the Agriculture Production Fair Practices Act, and may cooperate with any department or agency of the government, any state, territory, district, or

possession, or department, agency, or political subdivision thereof, or any person to implement the provisions of this act.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-10-110 of Title 2, unless there is created a duplication in numbering, reads as follows:

Any person aggrieved by a final order of the Commissioner made pursuant to the Agriculture Production Fair Practices Act may obtain review of such order as provided in the Administrative Procedures Act.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-10-111 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Whenever on the basis of any information available to the Commissioner, the Commissioner finds that any person is in violation of the Agriculture Production Fair Practices Act or in violation of any order of the Commissioner, the Commissioner may bring a civil action in accordance with subsection B of this section.

B. The Commissioner is authorized to commence a civil action for appropriate relief, including a permanent or temporary injunction. Any action under this section may be brought in the district court for the district in which the defendant is located, or resides or is doing business, and such court shall have jurisdiction to restrain such violation and to require compliance.

C. Any person who violates the Agriculture Production Fair Practices Act or any order of the Commissioner issued pursuant to the Agriculture Production Fair Practices Act shall be subject to a civil penalty not to exceed One Thousand Dollars (\$1,000.00) per day of such violation.

D. Any person who willfully violates any provision of Sections 4 or 5 of the Agriculture Production Fair Practices Act shall, upon conviction be guilty of a misdemeanor, and shall be punished by a fine of not less than One Thousand Dollars (\$1,000.00) nor more than

Ten Thousand Dollars (\$10,000.00) per day of such violation or by imprisonment for not more than one year, or both.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-10-112 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Any person may commence a civil action on his own behalf:

1. Against any person who is alleged to be in violation of the Agriculture Production Fair Practices Act or of any order issued by the Commissioner pursuant to the Agriculture Production Fair Practices Act; or

2. Against the Commissioner when there is alleged a failure of the Commissioner to perform any act or duty pursuant to the Agriculture Production Fair Practices Act which is not discretionary with the Commissioner.

B. No action may be commenced:

1. Under paragraph 1 of subsection A of this section:

a. prior to sixty (60) days after the plaintiff has given notice of the alleged violation to the Department and to the alleged violator, or

b. if the Commissioner has commenced and is diligently prosecuting a civil or criminal action in a court to require compliance with such section or order, but any person may intervene as a matter of right; or

2. Under paragraph 2 of subsection A of this section prior to sixty (60) days after the plaintiff has given notice of such action to the Commissioner.

C. Any person aggrieved by reason of any violation of, or combination or conspiracy to violate any provision of, the Agriculture Production Fair Practices Act may bring an action in the appropriate court without respect to the amount of the controversy, and shall recover damages therefor. Any action to enforce any cause

of action under this subsection shall be forever barred unless commenced within two (2) years after the cause of action arose.

D. The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation, including, but not limited to, reasonable attorney fees, to any party, whenever the court determines such award is appropriate.

E. District courts of this state shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether the aggrieved party shall have exhausted any administrative or other remedies that may be provided by law, except as provided in subsection B of this section.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-10-113 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Whenever required to carry out the objectives of the Agriculture Production Fair Practices Act:

1. The Commissioner of Agriculture shall be authorized to require any person to:

- a. establish and maintain such records,
- b. make such reports, and
- c. provide such other information as the Commissioner may reasonably require; and

2. The Department or authorized representative of the Department, upon presentation of credentials and a warrant or such other order of a court as may be required by law:

- a. shall have a right of entry to, upon, or through any premises in which records required to be maintained pursuant to the Oklahoma Agriculture Production Fair Practices Act are located, and
- b. may at reasonable times have access to and may copy any records, which any person is required to maintain

or which relate to any matter under investigation or in question.

B. Any records, reports, or information obtained under this section shall be available to the public except that upon a showing satisfactory to the Commissioner that such records, reports, or information, if made public, would divulge confidential business information, the Commissioner shall consider such record, report, or information or particular portion thereof confidential in accordance with the Oklahoma Open Records Act.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-10-114 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. In making inspections and investigations under the Agricultural Production Fair Practices Act, the Commissioner may require the attendance and testimony of witnesses and the production of evidence under oath.

B. The Commissioner, upon application of any party to a hearing held under Section 9 or 10 of the Agriculture Production Fair Practices Act, shall forthwith issue to such party subpoenas requiring the attendance and testimony of witnesses or the production of evidence requested in such application. Within ten (10) days after the service of a subpoena on any person requiring the production of any evidence in their possession or under their control, such person may petition the Commissioner to revoke such subpoena. The Commissioner shall revoke such subpoena if the Commissioner determines the evidence whose production is required does not relate to any matter in question, or if such subpoena does not describe with sufficient particularity the evidence whose production is required.

C. The Commissioner, or any officer or employee designated by him for such purpose, shall have power to administer oaths, sign and issue subpoenas, examine witnesses, and receive evidence. Witnesses

shall be paid the same fees and allowances as are paid witnesses in the courts of the State of Oklahoma.

D. In the case of any failure or refusal of any person to obey a subpoena or order of the Commissioner under this section, any court of the State of Oklahoma within the jurisdiction of which such person is found or resides or transacts business, upon the application by the Commissioner shall have jurisdiction to issue such person an order requiring such person to appear to produce evidence if, as and when so ordered to give testimony relating to the matter under investigation or in question. Any failure to obey such order of the court may be punished by said court as a contempt thereof.

SECTION 15. This act shall become effective November 1, 2000.

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